

CLASS VI UNDERGROUND INJECTION CONTROL PROGRAM

MEMORANDUM OF AGREEMENT

Between

North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division

And

The United States Environmental Protection Agency Region 8

I. INTRODUCTION

The North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division (Commission) and the United States Environmental Protection Agency, Region 8 (EPA or Regional Administrator) have entered into this Memorandum of Agreement (MOA) to delineate the responsibility of authority for all Class VI injection well activities. Upon approval by the Administrator, Class VI injection well activities will be incorporated into the current North Dakota 1422 Underground Injection Control (UIC) program. This MOA establishes policies, responsibilities, and procedures pursuant to 40 CFR parts 124, 144, 145, 146, and Section 1421 of the Safe Drinking Water Act (SDWA) for the State of North Dakota UIC program as authorized by Part C of SDWA (P.L. 93-523 as amended; 42 U.S.C. 300f *et seq.*). This MOA comprises only part of the North Dakota 1422 UIC program MOA with EPA. This MOA addresses the North Dakota Class VI UIC program, implemented by the Commission.

This MOA is entered into by the State of North Dakota and signed by Lynn D. Helms, Director of the North Dakota Department of Mineral Resources, Oil and Gas Division and the United States Environmental Protection Agency, Region 8 and signed by Shaun L. McGrath, Regional Administrator. This MOA shall become effective when approved by the Administrator.

II. POLICIES AND AGREEMENTS

A. Agency Responsibilities

The lead agency of the North Dakota 1422 UIC program is the North Dakota Department of Health. As the lead agency the Department of Health receives the annual program grant and coordinates the State 1422 UIC program, as designated by the Governor of the State. The Department of Health has authority over all Class I and V injection well activities. The North Dakota Geological Survey has authority over all Class III injection well activities. The Commission administers the 1425 UIC program regulating Class II injection well activities and receives a separate program grant from the EPA to administer the 1425 UIC program. The Commission has statutory authority to regulate Class VI injection well activities under North Dakota Century Code (NDCC) Chapter 38-22 and North Dakota Administrative Code (NDAC) Chapter 43-05-01. Each State agency is responsible for administering the State program for the injection wells under its jurisdiction including, but not limited to, reports, permits, monitoring, compliance, and enforcement actions. This MOA does not change the lead agency program administration status, nor the original intent of the North Dakota UIC program. This MOA is solely

intended to add Class VI injection wells to the current North Dakota 1422 UIC program.

B. Review and Modifications

This MOA may be modified upon the initiative of the Commission or EPA. Modifications must be in writing and must be signed by the Director of the Department of Mineral Resources, Oil and Gas Division and the Regional Administrator. Modifications become effective when signed by both parties.

C. Conformance with Laws and Regulations

The Commission shall administer the North Dakota Class VI UIC program consistent with the State's submission for program approval, this MOA, the SDWA, promulgated minimum requirements, State and federal laws and regulations, and any separate working agreements which shall be entered into with the Regional Administrator in concurrence by the Commission as necessary for the full administration of the Class VI UIC program.

D. Responsibilities of Parties

The parties agree to maintain a high level of cooperation and coordination between the Commission and EPA staffs to assure successful and efficient administration of the Class VI UIC program. In this partnership, the Regional Administrator will provide to the Commission necessary technical and policy assistance on program matters.

The Regional Administrator is responsible for keeping the Commission apprised, in a timely manner, of the meaning and content of the federal guidelines, technical standards, regulations, policy decisions, directives, and any other factors which affect the Class VI UIC program.

The Commission commits to carry out the Class VI UIC program as outlined in the Class VI primacy application and subsequent modifications to assume Class VI primacy.

It shall be the policy of the EPA and the Commission to minimize paperwork and interagency decision-making procedures and to make the best use of available manpower and funds so as to prevent duplication of effort and unnecessary delays.

The strategies and priorities for issuance of permits, compliance monitoring, enforcement procedures, and implementation of technical requirements shall be established in the Class VI UIC program description, or in subsequent working agreements. If requested by either party, meetings will be scheduled at reasonable intervals between the Commission and the EPA to review specific operating procedures, resolve problems, or discuss mutual concerns involving the administration of the Commission's Class VI program.

E. Sharing of Information

The Commission shall timely inform the EPA of any proposed, pending, or enacted modifications to laws, regulations, or guidelines, and any judicial decisions or administrative actions, which might affect the Commission's Class VI UIC program and the Commission's authority to administer the Class VI UIC program.

Any information obtained or used by the Commission under its Class VI UIC program shall be available to EPA upon request without restriction. If the information has been submitted to the Commission under a claim of confidentiality, the Commission must submit that claim to EPA when providing EPA such information. Any information obtained from the Commission and subject to a claim of confidentiality will be treated in accordance with 40 CFR, Part 2 and 40 CFR, Part 144.5. If EPA obtains information from the Commission that is not claimed to be confidential, EPA may make that information available to the public without further notice.

EPA shall furnish to the Commission the information in its files not submitted under a claim of confidentiality which the Commission needs to implement its Class VI program. EPA shall furnish to the Commission information submitted to EPA under a claim of confidentiality, which shall be subject to conditions found in 40 CFR Part 2.

F. Duty to Revise Program

As stated in 40 CFR 145.32(e), the Commission shall submit the information required under paragraph (b)(1) of this section [40 CFR 145.32(e)] within 270 days of any amendment to this part [145] or 40 CFR part 144, 146, or 124 which revises or adds any requirement respecting an approved [Class VI] UIC program.

G. Duration of MOA

This MOA will remain in effect until such time as State primacy enforcement responsibility is returned to EPA by the State, or withdrawn by EPA, according to the provisions of 40 CFR Part 145.31.

H. General Provisions

Nothing in this MOA is intended to affect any UIC program requirement, including any standards or prohibitions, rules, regulations, or policies, established by the Commission, as long as the State requirements are no less stringent than or are deemed equally protective by EPA as:

1. Any set forth in the Class VI UIC regulations; or
2. Other requirements or prohibitions established under the SDWA or applicable regulations.

Nothing in this MOA shall be construed to limit or broaden the authority of the EPA to take action pursuant to Sections 1421, 1422, 1423, 1424, 1425, 1431 or other sections of the SDWA.

III. PERMITTING

A. General

The Commission is responsible for all Class VI injection well permitting procedures as detailed in the Class VI UIC program description, and pursuant to State and federal laws, rules, and regulations.

Permits for Class VI injection wells will be issued under the authority of NDCC Chapter 38-22 and NDAC Chapter 43-05-01. Class VI injection well permits will be issued by the Commission.

B. Compliance Schedules and Reports

The Commission agrees to establish compliance schedules in permits where appropriate and to require periodic reporting on compliance with compliance schedules and other permit conditions.

IV. COMPLIANCE MONITORING

A. General

The Commission shall operate a timely and effective compliance monitoring system to track compliance with permit conditions and program requirements as outlined in the Class VI UIC program description. For purposes of this MOA, the terms “compliance monitoring” or “compliance evaluation” shall refer to all efforts associated with determining compliance with Class VI UIC program requirements.

B. Compliance Schedule

The Commission agrees to maintain procedures to receive, evaluate, retain, and investigate all notices and reports that are required by permit compliance schedules and program regulations. These procedures shall also include the necessary elements to investigate the failure of persons required to submit such notices and reports. The Commission shall initiate appropriate compliance actions when required information is not received or when the reports are not submitted.

C. Review of Compliance Reports

The Commission shall conduct a timely and thorough review of all such reports to determine compliance status. The Commission shall operate a tracking system to determine if:

1. The reports required by permits and program regulations are submitted;
2. The submitted reports are complete and accurate; and
3. The permit conditions and program requirements are met.

The reports and notices shall be evaluated for compliance status in accordance with the State compliance program and the program requirements.

D. Inspection

The Commission agrees to have inspection and surveillance procedures to determine compliance or noncompliance with the applicable requirements of the Class VI UIC program. Surveys or other methods of surveillance shall be utilized to identify persons who have not complied with permit applications or other program requirements. Any compilations, index, or inventory obtained for such facilities or activities shall be made available to the Regional Administrator upon request.

The Commission shall conduct periodic inspections of the facilities and activities subject to regulatory requirements. These compliance monitoring inspections shall be performed to assess compliance with all Class VI UIC program requirements and include selecting and evaluating a facility’s monitoring and reporting program. These inspections shall be conducted to determine compliance or noncompliance with the issued permits, verify the accuracy of information submitted by operator in reporting forms and monitoring data, and to verify the adequacy of sampling, monitoring, and other methods to provide the

information. These inspections may be announced or unannounced.

E. Information from the public

The Commission shall provide opportunity for the public to submit information on violations, and to have procedures for receiving, investigating, and ensuring proper consideration of the information.

F. Authority to Enter

The Commission (and other State agency designees) engaged in compliance monitoring and evaluation shall have the authority to enter any site or premises subject to regulation or to review and copy the records of relevant program operations where such records are kept.

G. Admissibility

Any investigatory inspections shall be conducted and samples and other information collected in a manner to provide evidence admissible in an enforcement proceeding or in court.

V. ENFORCEMENT

A. General

The Commission is responsible for taking timely and appropriate enforcement action against persons in violation of Class VI UIC program requirements, compliance schedules, and technical requirements.

The EPA shall be notified of any enforcement actions taken by the Commission. Failure by the ~~Commission~~ State to initiate appropriate enforcement action against a substantive violation may be the basis for EPA's determination that the ~~Commission~~ State has failed to take timely enforcement action. Such a determination shall result in EPA filing an action to enforce the Commission's rules consistent with Section 1423 of the SDWA.

B. Enforcement Mechanisms

The Commission shall have the mechanism to restrain immediately and effectively any person engaging in any unauthorized activity or operation, which is endangering or causing damage to public health or the environment as applicable to the program requirements. The State also has the means to sue in courts of competent jurisdiction to prohibit any threatened or continuing violation of any UIC program requirement. Additionally, the State is authorized to sue to recover civil penalties and criminal remedies as established in NDCC Section 38-22-18 and NDCC Chapter 61-28.

The North Dakota Department of Health will assist in any enforcement action against persons in violation of North Dakota Century Code (NDCC) Chapter 61-28, any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under NDCC Chapter 61-28; any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under NDCC Chapter 61-28 or any permit condition, rule, order, limitation, or other applicable requirement implementing NDCC Chapter 61-28, resulting in any adverse impact to waters of the State.

C. Public Participation

The Commission shall provide the public an opportunity to participate in the State enforcement process as specified in the Class VI UIC program description.

D. Assessment of Fines

The Commission shall agree to assess civil penalties in amounts appropriate to the violation as required in NDCC Section 38-22-18.

VI. EPA OVERSIGHT

A. General

EPA shall oversee the Commission's administration of the Class VI UIC program on a continuing basis to assure that such administration is consistent with this MOA and all applicable requirements embodied in current regulations, statutes, and federal law.

In addition to the specific oversight activities listed in this section, EPA may from time to time request pertinent information related to the oversight of the Class VI UIC program, and the Commission shall submit and provide access to files necessary for evaluating the Commission's administration of the Class VI UIC program.

B. Immediate Reporting on Noncompliance

The Commission shall notify the Regional Administrator, of any major, imminent hazard to public health resulting from the endangerment of an underground source of drinking water of the State by Class VI injection well activities.

C. Program Reports

Federal requirement 40 CFR 146.91(e) requires that regardless of whether a State has primacy enforcement responsibility, owners or operators must submit all required reports, submittals, and notifications under Subpart H of Part 146 to EPA in an electronic format approved by EPA. Additional State regulations require the owner or operator to submit reports, submittals, and notifications to the Commission. In order to assure both the State, as the primacy authority, and EPA, as the oversight authority, have consistent data throughout program implementation, the Commission agrees to submit to EPA or allow EPA viewing access to all Class VI reports, submittals, and notifications submitted to the State. The Commission will assist the EPA in owner or operator compliance with 40 CFR 146.91(e) by submitting to EPA or allowing EPA viewing access to all required reports, submittals, and notifications under Subpart H of Part 146 through the Commission's database to EPA in an electronic format approved by EPA.

D. Quarterly Program Reports

The Department shall submit to the Regional Administrator quarterly program reports as specified in 40 CFR, Part 144.8(a)

Quarterly reports will be submitted in accordance with the following schedule:

<u>Quarter</u>	<u>Report Due to Regional Administrator</u>
October, November, December	January 30
January, February, March	April 30
April, May, June	July 30
July, August, September	October 30

E. Annual Program Reports

The Commission shall submit an annual program report as specified by 40 CFR 144.8 to the Regional Administrator 60 days after end of the fiscal year. The report is for the period of October 1 through September 30 (federal fiscal year) and shall consist of the following:

- 1) A well inventory consisting of the facility name and ID, location, well type, and well status.
- 2) A written summary of the major program activities completed and in progress during the fiscal year as identified in the work plan.

The Commission will provide the North Dakota Department of Health any information or data necessary to assist in the State/EPA Performance Partnership Agreement.

F. Major Facilities

Major facilities shall include: All Carbon Dioxide Storage Facilities.

G. Aquifer Exemptions

Other than EPA approved aquifer exemption expansions that meet the criteria for exempted aquifers, new aquifer exemptions shall not be issued for Class VI injection well activities. Even if an aquifer has not been specifically identified by the Commission, it is an underground source of drinking water if it meets the definition.

H. Mechanical Integrity

The Commission may allow the use of a test to demonstrate mechanical integrity other than those listed in the Class VI UIC program description. Any alternative mechanical integrity test must receive written approval from the Administrator prior to implementation and be consistent with the requirements of 40 CFR 146.89(e).

I. Inspection and Surveillance by EPA

The Regional Administrator may select Class VI injection well facilities and activities within the State for EPA inspection. EPA may conduct such inspections jointly with the Commission. Upon request of the Regional Administrator to participate in occasional compliance evaluation inspections scheduled by the

Commission, the Commission shall give the Regional Administrator adequate notice of inspections scheduled by the Commission during the next quarterly reporting period. The Regional Administrator may also choose to conduct inspections independently of the Commission's schedule. In such cases, the EPA shall notify the Commission of any proposed Class VI injection well facility inspection within the State of North Dakota at least seven (7) days before any inspection that EPA determines to be necessary. This procedure will allow coordination of scheduling and allow joint inspections. This procedure may be waived for emergency situations pursuant to section 1431 of the SDWA.

J. Annual Performance Evaluation

EPA shall conduct, at least annually, performance evaluations of the North Dakota Class VI UIC program using the Commission's quarterly reports, annual noncompliance reports, program reports, and other requested information to determine State program consistency with its UIC program submission, the SDWA, and applicable State and federal regulations. The review will include progress towards program implementation, changes in the Class VI UIC program description, and efforts towards progress on program elements.

EPA shall submit a summary of the evaluation findings to the Commission outlining the deficiencies in program performance and recommendations for improving State operations. The report also might provide guidance for the development of an upcoming grant application, should federal funds become available for Class VI activities. The Commission shall have 30 working days from the date of receipt to concur with or comment on the findings and recommendations.

VII. SIGNATURES

IN WITNESS WHEREOF, the parties have executed this MOA

North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division

By _____ Lynn D. Helms, Director

Date _____

United States Environmental Protection Agency, Region 8

By _____ Shaun L. McGrath, Regional Administrator

Date _____